

ORDINANCE NO. 15-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, TO AMEND TITLE 13 OF THE COSTA MESA MUNICIPAL CODE BY ADDING CHAPTER XVI (GROUP HOMES, SOBER LIVING HOMES, AND RESIDENTIAL CARE FACILITIES) IN THE R2-MD, R2-HD AND R3 RESIDENTIAL ZONES AND THE PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (PLANNED DEVELOPMENT ZONES) OF TITLE 13 AND AMENDING SECTION 13-6 (DEFINITIONS) OF ARTICLE 2 (DEFINITIONS) OF CHAPTER I (GENERAL) AND SECTION 13-30 TABLE 13-30 (LAND USE MATRIX) OF CHAPTER IV OF ARTICLE 1 OF CHAPTER V OF TITLE 13

THE CITY COUNCIL OF THE CITY OF COSTA MESA MAKES THE FOLLOWING FINDINGS WITH RESPECT TO THE ADOPTION OF THIS ORDINANCE:

WHEREAS, under the California Constitution, Article XI, Section 7, the City has been granted broad police powers to preserve the residential characteristics of its R2MD, R2HD, and R3 zones; and planned development residential zones, which powers have been recognized by both the California Supreme Court and United States Supreme Court, the latter of which has stated that, "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled"; and

WHEREAS, the Federal Fair Housing Act Amendments ("FHAA") and the California Fair Employment Housing Act ("FEHA") prohibit enforcement of zoning ordinances which would on their face or have the effect of discriminating against equal housing opportunities for the handicapped; and

WHEREAS, a core purpose of the FHAA, FEHA and California's Lanterman Act is to provide a broader range of housing opportunities to the handicapped; to free the handicapped, to the extent possible, from institutional style living; and to ensure that handicapped persons have the opportunity to live in normal residential surroundings and use and enjoy a dwelling in a manner similar to the way a dwelling is enjoyed by the non-handicapped; and

WHEREAS, to fulfill this purpose the FHAA and FEHA also require that the City provide reasonable accommodations to its zoning ordinances if such accommodation is necessary to afford a handicapped person an equal opportunity to use and enjoy a dwelling; and

WHEREAS, the Lanterman Act fulfills this purpose in part by requiring cities to treat state licensed residential care facilities serving six or fewer as a residential use; and

WHEREAS, in enacting this Ordinance the City Council of the City of Costa Mesa is attempting to strike a balance between the City's and residents' interests of preserving the characteristics of residential neighborhoods and to provide opportunities for the

handicapped to reside in such neighborhoods that are enjoyed by the non-handicapped; and

WHEREAS, over the past several years the City, County and State have seen a significant increase in the number of single- and multi-family homes being utilized as alcohol and drug recovery facilities for large numbers of individuals (hereafter, "sober living homes"); and

WHEREAS, the increase appears to be driven in part by the Substance Abuse and Crime Prevention Act of 2000 (hereafter, "the Act") adopted by California voters which provides that specified first-time drug and alcohol offenders are to be afforded the opportunity to receive substance abuse treatment rather than incarceration; and

WHEREAS, the Affordable Care Act has significantly expanded the availability of health care coverage for substance abuse treatment; and

WHEREAS, the City of Costa Mesa has seen a sharp increase in the number of sober living homes, which has generated secondary impacts including, but not limited to neighborhood parking shortfalls, overcrowding, inordinate amounts of second-hand smoke, and noise; and the clustering of sober living facilities in close proximity to each other creating near neighborhoods of sober living homes; and

WHEREAS, over the past 20 months from January 2014 to September 2015 the City experienced an increase of 25.4% in the number of sober living facilities and residential care facilities in the multiple-family residential zones. Those new facilities resulted in an increase of 142-beds, which is a 20.6% increase in beds since January of 2014. As of September 2015 the City had a total of 84 residential facilities, with 831-beds to treat drug and alcohol addiction located in its multiple-family residential districts; and

WHEREAS, currently, in all zones, it is estimated that the City of Costa Mesa is home to 1586 alcohol and drug recovery beds, divided as follows: 44 licensed residential facilities/certified alcohol and drug programs in residential zones, providing 411 beds; 107 unlicensed sober living homes in residential zones, providing 600 beds; Included in those 107 homes are 41 homes who have submitted applications per the R1 Ordinance providing 252 beds; and 1 State Licensed Facility on two separate parcels, providing 76 beds in a non-residential zone; and 40 nonresidential services facilities, providing support services such as administrative offices, therapy etc.

WHEREAS, the City of Costa Mesa is currently home to almost 28.9% of the state licensed residential drug and alcohol treatment facilities in Orange County, while the City holds 3.6% of the County's population, thus it is reasonable to infer that unlicensed sober living homes are locating in the City at a higher concentration than in nearby communities; and

WHEREAS, over the last decade the number of sober living homes in the City of Costa Mesa is rapidly increasing, leading to an overconcentration of sober living homes in certain of the City's residential neighborhoods, which is both deleterious to the residential character of these neighborhoods and may also lead to the institutionalization of such neighborhoods; and

WHEREAS, the number of sober living homes has not increased to the point of overconcentration in certain Planned Development zones; and

WHEREAS, the purpose of sober living homes is to provide a comfortable living environment for persons with drug or alcohol addictions in which they remain clean and sober and can participate in a recovery program in a residential, community environment, and so that they have the opportunity to reside in the residential neighborhood of their choice; and

WHEREAS, recovering alcoholics and drug addicts, who are not currently using alcohol or drugs, are considered handicapped under both the FHAA and FEHA; and

WHEREAS, in 2008, the U.S. Department of Health and Human Services projected spending on substance abuse recovery to be \$35 billion annually by 2014 (source: *Projections of National Expenditures for Mental Health Services and Substance Abuse Treatment 2004-2014*, U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, Katharine R. Levit et al., 2008); and

WHEREAS, based on the City's experience it has become clear that at least some operators of sober living homes are driven more by a motivation to profit rather than to provide a comfortable living environment in which recovering addicts have a realistic potential of recovery, or to provide a living environment which remotely resembles the manner in which the non-disabled use and enjoy a dwelling; and

WHEREAS, establishing distance requirements for sober living homes is reasonable and non-discriminatory and not only helps preserve the residential character of the R2MD, R2HD, and R3 zones; as well as the planned development residential neighborhoods, but also furthers the interest of ensuring that the handicapped are not living in overcrowded environments that are counterproductive to their well-being and recover; and

WHEREAS, sober living homes do not function as a single housekeeping unit for the following reasons: (1) they house extremely transient populations (programs are generally about 90 days and as noted, the 2008 UCLA study found that 65-70% of recovering addicts don't finish their recovery programs); (2) the residents generally have no established ties to each other when they move in and typically do not mingle with other neighbors; (3) neighbors generally do not know who or who does not reside in the home; (4) the residents have little to no say about who lives or doesn't live in the home; (5) the residents do not generally share expenses; (6) the residents are often responsible for their own food, laundry and phone; (7) when residents disobey house rules they are often

just kicked out of the house; (8) the residents generally do not share the same acquaintances; and (9) residents often pay significantly above-market rate rents; and

WHEREAS, the size and makeup of the households in sober living homes, even those allowed as a matter of right under the Costa Mesa Municipal Code, is dissimilar and larger than the norm, creating impacts on water, sewer, roads, parking and other City services that are far greater than the average household, in that the average number of persons per California household is 2.90 (2.68 persons per household according to the City's General Plan), while a sober living facility allowed as a matter of right would house six, which is in the top 5% of households in Orange County according to the most recent U.S. federal census data; and

WHEREAS, all the individuals residing in a sober living facility are generally over the age of 18, while the average household has just 2.2 individuals over the age of 18 according to the most recent federal census data; and

WHEREAS, the City and public utility providers utilize federal census data and other information relating to the characteristics of residential neighborhoods to, among other things: (1) determine the design of residential homes, residential neighborhoods, park systems, library systems, transportation systems; (2) determine parking and garage requirements of various (bedroom) sizes and density of units; (3) develop its General Plan and zoning ordinances; (4) determine police and fire staffing; (5) determine impacts to water, sewer and other services; and (5) establish impacts fees that fairly and proportionally fund facilities for traffic, parks, libraries, police and fire; and

WHEREAS, because of their extremely transient populations, above-normal numbers of individuals/adults residing in a single dwelling and the lack of regulations, sober living facilities present problems not typically associated with more traditional residential uses, including but not limited to: the housing of large numbers of unrelated adult who may or may not be supervised; disproportionate numbers of cars associated with a single housing unit, which causes disproportionate traffic and utilization of on-street parking; excessive noise and outdoor smoking, which interferes with the use and enjoyment of neighbors' use of their property; neighbors who have little to no idea who does and does not reside in the home; little to no participation in community activities that form and strengthen neighborhood cohesion; a history of opening facilities in complete disregard of the Costa Mesa Municipal Code and with little regard for impacts to the neighborhood; disproportional impacts from the average dwelling unit to nearly all public services including sewer, water, parks, libraries, transportation infrastructure, fire and police; a history of congregating in the same general area; and the potential influx of individuals with a criminal record; and

WHEREAS, a variable separation requirement will still allow for a reasonable market for the purchase and operation of sober living homes within the City and still result in preferential treatment for sober living homes in that non-handicapped individuals in a similar living situation (i.e., in boardinghouse-style residences) have fewer housing opportunities than the handicapped; and

WHEREAS, housing inordinately large numbers of unrelated adults in a single dwelling or congregating sober living homes in close proximity to each other does not provide the handicapped with an opportunity to "live in normal residential surroundings," but rather places them into living environments bearing more in common with the types of institutional/campus/dormitory living that the FEHA and FHAA were designed to provide relief from for the handicapped, and which no reasonable person could contend provides a life in a normal residential surrounding; and

WHEREAS, notwithstanding the above, the City Council recognizes that while not in character with residential neighborhoods, that when operated responsibly, group homes, including sober living homes, provide a societal benefit by providing the handicapped the opportunity to live in residential neighborhoods, as well as providing recovery programs for individuals attempting to overcome their drug and alcohol addictions, and that therefore providing greater access to residential zones to group homes, including sober living homes, than to boardinghouses or any other type of group living provides a benefit to the City and its residents; and

WHEREAS, without some regulation there is no way of ensuring that the individuals entering into a group home are handicapped individuals and entitled to reasonable accommodation under local and state law; that a group home is operated professionally to minimize impacts to the surrounding neighborhood; and that the secondary impacts from over concentration of both group homes in a neighborhood and large numbers of unrelated adults residing in a single facility in an individual home are lessened; and

WHEREAS, in addition to group homes locating in residential neighborhoods other state-licensed residential care facilities for six or fewer persons who are mentally disordered or otherwise handicapped or supervised, are also taking up residence in these neighborhoods; and

WHEREAS, the purpose of group homes for the handicapped is to provide the handicapped an equal opportunity to comfortably reside in the residential neighborhood of their choice; and

WHEREAS, no residential developments of any kind are permitted in the I&R (Institutional and Recreation) zone, and no group homes exist in this zone at the time of the adoption of this ordinance; and

WHEREAS, this Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this Ordinance will have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES ORDAIN AS FOLLOWS:

Section 1: The following definition in Section 13-6 (Definitions) of Article 2 (Definitions) of Chapter I (General) of Title 13 (Planning, Zoning and Development) are hereby repealed and replaced with the following:

Boardinghouse. A residence or dwelling, other than a hotel, wherein rooms are rented under two (2) or more separate written or oral rental agreements, leases or subleases or combination thereof, whether or not the owner, agent or rental manager resides within the residence. Boardinghouse, small means two (2) or fewer rooms being rented. Boardinghouse, large means three (3) to six (6) rooms being rented. Boardinghouses renting more than 6 rooms are prohibited.

Section 2: Chapter XVI (Group homes and residential care facilities in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) of Title 13 (Planning, Zoning and Development) is hereby added as follows:

13-320. - Purpose.

This chapter is intended to preserve the residential character the City of Costa Mesa's residential neighborhoods and to further the purposes of the FEHA, the FHAA and the Lanterman Act by, among other things: (1) ensuring that group homes are actually entitled to the special accommodation and/or additional accommodation provided under the Costa Mesa Municipal Code and not simply skirting the City's boarding house regulations; (2) limiting the secondary impacts of group homes by reducing noise and traffic, preserving safety and providing adequate off-street parking; (3) providing an accommodation for the handicapped that is reasonable and actually bears some resemblance to the opportunities afforded non-handicapped individuals to use and enjoy a dwelling unit in a residential neighborhood; and (4) to provide comfortable living environments that will enhance the opportunity for the handicapped, including recovering addicts to be successful in their programs.

13-321. - Definitions.

Property. For purposes of this chapter, property is defined as any single development lot that has been subdivided bearing its own assessor's parcel number or with an approved subdivision map or condominium map.

13-322. - Group Homes in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) Zones with Six or Fewer Occupants.

(a) A special use permit shall be required for and may be granted to permit the operation of a group home including a sober living home with six or

fewer occupants in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) zones subject to the following conditions:

(1) The application complies with subsections (a)(1), (a)(2) and (a)(4) through (a)(10) of Section 13-311.

(2) The application includes a live scan of the house manager and/or operator of the group home.

(3) The group home or sober living home is at least 650 feet from any other property, as defined in Section 13-321, that contains a group home, sober living home or state licensed drug and alcohol treatment facility, as measured from the property line.

(4) Upon eviction from or involuntary termination of residency in a group home, the operator of the group home shall make available to the occupant transportation to the address listed on the occupant's driver license, state issued identification card, or the permanent address identified in the occupant's application or referral to the group home. The group home operator may not satisfy this obligation by providing remuneration to the occupant for the cost of transportation.

(b) An applicant may seek relief from the strict application of this section by submitting an application to the director setting forth specific reasons as to why accommodation over and above this section is necessary under state and federal laws, pursuant to section 13-200.62.

(c) Notwithstanding any provision of section 13-3119(b) to the contrary, the Development Services Director may revoke or deny a special use permit for a group home subject to this chapter following the director's determination that any of the circumstances set forth in Section 13-311(b)(1) through (b)(5), (b)(6)(ii), (b)(6)(iii) and (b)(7) exist.

13-323. - Conditional Use Permit Required for Group Homes, Residential Care Facilities and Drug and Alcohol Treatment Facilities in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) with 7 or More Occupants.

A conditional use permit shall be required for and may be granted to allow the operation of a group home, state licensed residential care facility or state licensed drug and alcohol treatment facility with seven (7) or more occupants in **the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones)** zones subject to the following conditions:

(a) The requirements of Chapter III PLANNING APPLICATIONS have been met.

(b) The group home, residential care facility or state licensed drug and alcohol treatment facility is at least six-hundred fifty feet from any property, as defined in Section 13-321, that contains a group home, sober living home or state licensed drug and alcohol treatment facility, as measured from the property line.

(c) The applicant obtains an operator's permit as required by Article 23, Chapter 2 of Title 9 except that this requirement shall not apply to any state licensed residential care facility or state licensed drug and alcohol treatment facility.

(d) The findings for granting a conditional use permit in accordance with Section 13-29(g) are met.

13-324. - Compliance.

(a) Group homes in the in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) Zones with six (6) or fewer occupants that are in existence upon the effective date of this ordinance may continue to operate subject to the following:

1. A complete application for a special use permit is filed within 90 days of the effective date of this ordinance; and
2. The group home is in full compliance with all of the conditions of this ordinance within one (1) year of its effective date. Notwithstanding the foregoing, existing group homes obligated by a written lease exceeding one (1) year from the effective date of the ordinance, or whose activity involves investment of money in leasehold or improvements such that a longer period is necessary to prevent undue financial hardship, are eligible for up to one (1) additional years grace period pursuant to planning division approval.

(b) Group homes, state licensed residential care facilities and state licensed drug and alcohol treatment facilities in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) with seven (7) or more occupants that are in existence upon the effective date of this ordinance may continue to operate subject to the following:

1. The operator of a group home obtains an operator's permit pursuant to section 9-372 et seq. within 120 days from the effective date of this ordinance; and
2. The group home, state licensed residential care facility and/or state licensed drug and alcohol treatment facility is in full compliance with all conditions of this ordinance, including obtaining a conditional use permit, within one (1) year from the effective date of this ordinance. Notwithstanding the foregoing, an existing group home, state licensed residential care facility and/or state licensed drug and alcohol treatment facility obligated by a written lease exceeding one (1) year from the effective date of the ordinance, or whose

activity involves investment of money in leasehold or improvements such that a longer period is necessary to prevent undue financial hardship, are eligible for up to one (1) additional years grace period pursuant to planning division approval.

13-325. - Severability.

Should any section, subsection, clause, or provision of this chapter for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional. This Ordinance shall be prospective in application from its effective date.

Section 3: Subdivisions (4) through (10) of Section 13-30 Table 13-30 of Chapter IV (Citywide Land Use Matrix) of Title 13 (Planning, Zoning and Development) are hereby repealed and replaced with the following:

See Attachment A.

Section 4: Footnote 5 to Table 13-30 (Land Use Matrix) of Section 13-30 (Purpose) of Chapter IV (Citywide Land Use Matrix) of Title 13 (Planning, Zoning and Development) is hereby amended to read as follows:

⁵ 650 foot separation required between sober living homes, or from state licensed alcohol or drug abuse recovery or treatment facilities. CMMC 13-311(a)(10)(i).

Section 5: Footnotes 6, 7 and 8 to Table 13-30 (Land Use Matrix) of Section 13-30 (Purpose) of Chapter IV (Citywide Land Use Matrix) of Title 13 (Planning, Zoning and Development) is hereby added as follows:

⁶ Subject to the separation requirements set forth in Section 13-322(a)(3).

⁷ Small boardinghouses shall locate at least 650 feet from any other small boardinghouse. Large boardinghouses shall be located at least 1,000 feet from any other boardinghouse.

⁸ Uses prohibited in the base zoning district of a Mixed-Use Overlay Zone shall also be prohibited in the Overlay Zone.

Section 6: Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of

such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 7: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 8: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this 17th day of November, 2015.



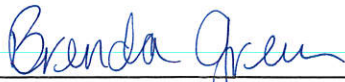
Stephen M. Mensinger, Mayor

APPROVED AS TO FORM:



Thomas Duarte, City Attorney

ATTEST:



Brenda Green, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above foregoing Ordinance No. 15-11, as introduced and considered section by section at a regular meeting of said City Council held on the 3rd day of November, 2015, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the 17th day of November, 2015, by the following roll call vote:

AYES:	COUNCIL MEMBERS:	FOLEY, GENIS, MONAHAN, RIGHEIMER, MENSINGER
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this 18th day of November, 2015.



Brenda Green, City Clerk

